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No. 84-1350

IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 1984

WALTER W. COHEN, et al.,

Petitioners,

v.

NANCY BETSON, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I. COUNTER STATEMENT OF THE QUESTION PRESENTED

Whether the Court of Appeals erred in holding that the Eleventh Amendment does not bar prospective injunctive relief against state officials who violated federal law by not adhering to their federally mandated and approved plan for administering a cooperative federal-state program.

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III. TABLE OF CITATIONS

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IV. SUMMARY OF ARGUMENT

Review should be denied because the decision below does not conflict with any decisions of this Court or of any court of appeals.

The Court of Appeals below held that the Eleventh Amendment does not bar prospective relief against state officials who violate a federal statute by not complying with the state plan submitted to and approved by the federal government as required by the statute. This decision is fully consistent with the Court's decision in Pennhurst State School and Hospital v. Halderman, 465 U.S. ___, 104 S.Ct. 900 (1984), which reaffirmed the power of the federal courts to vindicate federal rights. No decisions of the Court or of any court of appeals suggest that federal courts are powerless to require state officials to adhere to a federally mandated state plan.

Moreover, since petitioners are free to alter their state plan, any liability they suffer as a result of the prospective injunction affecting two individuals is entirely of their own choosing. Review by the Court is therefore not warranted.

V. REASONS FOR DENYING THE WRIT

THE DECISION BELOW DOES NOT CONFLICT WITH ANY OTHER DECISION AND DOES NOT RAISE ANY IMPORTANT QUESTION JUSTIFYING REVIEW

Petitioners seek review of a prospective injunction requiring Pennsylvania officials to pay benefits to two individuals under the federal-state Aid to Families with Dependent Children (AFDC) program.

The state officials disqualified respondents for receiving personal injury awards, even though personal injury awards are not disqualifying payments under the state AFDC plan submitted to and approved by the federal government. The Court of Appeals for the Third Circuit held that respondents were entitled to relief because the state officials' denial of benefits, payable under their own state plan, violated the Social Security Act, which requires participating states to adhere to their state plans and to pay benefits to all persons eligible under those plans. (Pet. App. 44a-48a).

In mandating prospective relief, the Court of Appeals emphatically and unanimously rejected petitioners' contention that Pennhurst State School and Hospital v. Halderman, 465 U.S.___, 104 S.Ct. 900 (1984), renders

federal courts powerless to protect a federal right simply because the content of the right is determined in part by a state plan submitted to the federal government in accordance with federal law. As the Court of Appeals wrote, since the state officials transgressed "federal law..., the Pennhurst case is inapplicable and injunctive relief against the state officials is not precluded." (Pet. App. 45a-48a)(emphasis in original).

The Third Circuit's decision, based as it is on federal law, in no way conflicts with the Court's decision in Pennhurst. Pennhurst specifically reaffirmed the power of the federal courts to "vindicate federal rights and hold state officials responsible to 'the supreme authority of the United States.'" Pennhurst, 465 U.S. at ___, 104 S.Ct. at 910, 912 n. 17. It did not overrule the long line of cases recognizing federal court jurisdiction to grant relief against government officials for violations of federal statutes. See, e.g., Edelman v. Jordan, 415 U.S. 651, 653 n. 1 (1974). Indeed, Pennhurst was remanded in part for a determination of whether the injunction in that case could be sustained under a federal statute. Id. at ___, 104 S.Ct. at 921. Petitioners themselves acknowledged in the Court of Appeals that "the Pennhurst decision does not preclude claims for injunctive relief against state officials based on violations of federal law." (Pet. App. 44a).

Since Pennhurst, neither this Court nor any court of appeals has held that the Eleventh Amendment bars prospective relief against state officials who violate federal statutes. On the contrary, the Court has recognized the propriety of a prospective injunction under the Education of the Handicapped Act, a federal-state scheme for special education for handicapped children similar to the federal-state AFDC program. Smith v. Robinson, ___ U.S. ___, 104 S.Ct. 3457, 3464 n.6 (1984).

Nor has any court held that the Eleventh Amendment bars injunctive relief against state officials for violations of federal laws which refer to or incorporate state standards. See, e.g., Students of California School for the Blind v. Honig, 736 F.2d 538 (9th Cir. 1984) (Pennhurst does not bar order under federal handicapped rights statute requiring state officials to perform same seismic safety tests California education code mandates for all schools); accord, Rogers v. Okin, 738 F.2d 1 (1st Cir. 1984)(Pennhurst does not bar injunction protecting due process rights in state-created liberty interest).

Thus, the decision below does not conflict with any decision of this Court or with any decision of any courts of appeals. Review by this Court is therefore inappropriate.

Moreover, this case lacks the importance necessary to justify review. In contrast with Pennhurst, any liability the state suffers as a result of the prospective order affecting two beneficiaries is entirely of the state officials' own choosing. Assuming, as petitioners argue, that federal law permits participating states to disqualify recipients of personal injury awards,* the state officials can avoid future liability simply by changing their state plan. Review by this Court is inappropriate where the petitioners complain of an order requiring them to follow a state plan that they have the power to alter at any time.

---

* The Court of Appeals below did not reach this issue. (Pet. App. 34a).

VI. CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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DEBORAH HARRIS
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DATED: March 25, 1985

No. 84-1350

IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 1984

WALTER W. COHEN, et al.,

Petitioners,

v.

NANCY BETSON, et al.,

Respondents.

AFFIDAVIT OF SERVICE

I, DEBORAH HARRIS, ESQUIRE, being duly sworn according to law, hereby state that I am a member of the bar of this Court and that on this date completed copies of Respondents' Motion to Proceed In Forma Pauperis and Respondents' Brief in Opposition to Petition for Writ of Certiorari were forwarded by first class mail, postage prepaid, as follows:

10 copies to: Alexander L. Stevas, Clerk
Supreme Court of the United States
One First Street, N.E.
Washington, D. C. 20543

2 copies to: Allen C. Warshaw, Esquire
Counsel for Petitioners
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Fifteenth Floor, Strawberry Square
Harrisburg, Pennsylvania 17120

To my knowledge, the mailing took place on this date within the permitted time.

DATED: March 25, 1985

Deborah Harris
DEBORAH HARRIS

Sworn to and subscribed
before me this 25th day
of March 1985

JACQUELYN D. BROWN
Notary Public, Phila., Phila. Co.
My Commission Expires March 28, 1988

ORIGINAL

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NO. 84-1357

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

UNITED STATES OF AMERICA, PETITIONER

VS.

JOHN HENRY MORGAN

ON PETITION FOR A

WRIT OF CERTIORARI TO THE UNITED STATES

COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONSE IN OPPOSITION TO PETITION

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QUESTIONS PRESENTED

1. Wehther law enforcement officers who have probable cause to believe that a suspect committed a felony must obtain a warrant before inducing the suspect to leave his house so that they may arrest him, when the officers effect the arrest without entering the house.

2. Whether, assuming that officers violate the Fourth Amendment when they summon a suspect from his house without a warrant, a weapon that the suspect carries with him when he leaves the house should be treated as a fruit of the improper arrest.

3. Whether the Fourth Amendment exclusionary rule should be modified so as not to bar the admission of evidence seized in the reasonable belief that the warrantless arrest of a felony suspect did not violate the Fourth Amendment.

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NO. 84-1357

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OCTOBER TERM, 1984

UNITED STATES OF AMERICA, PETITIONER

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RESPONSE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JURISDICTION

Jurisdiction is admitted.

STATEMENT

Respondent generally agrees with the STATEMENT of the Petition except that, in paraphrasing, some of the "facts" tend to be distorted.

REASONS FOR DENYING THE PETITION

Question Number 1 does not fairly represent the factual circumstances of the hearing upon which the Circuit Court of Appeals based its decision. The unique facts of the warrantless arrest in the subject case do not form the proper basis for a clarification of "arrest law" which Petitioner seeks herein.

Question Number 2 also assumes circumstances as a basis for clarification which are unsupported by the facts present in the subject case, and is subject to the flagrant unconstitutionality of the intrusion and arrest of Respondent. The facts of this case fully support the finding of the Circuit Court of Appeals that Respondent was "..placed under arrest, without the issuance of a warrant, at the moment the police encircled the residence." (App. 12a)

Question Number 3 relies upon factual circumstances which would justify consideration of a reasonable belief" on the part of the arresting officers that they were not violating the Fourth Amendment, when to the contrary, the facts of the case clearly show that the arresting officers acted in reckless disregard of Respondent's constitutional rights and such was found by the Circuit Court of Appeals.

Wherefore, Respondent contends that the Questions sought to be considered by the Petitioner are not fairly represented by the facts of this case, that this case would not present a proper vehicle for a test of the principles of law sought to be established by Petitioner, and that the Petition should be denied.

In Question Number 1, Petitioner seeks to have the warrantless arrest in this case tested on the basis that Respondent was <u>induced</u> to <u>leave</u> his house so the officers could arrest him, and assumes that the officers effected the arrest without entering the house. This is not supported by the factual circumstances of the subject case.

The Circuit Court of Appeals, in a close scrutiny of the trial Court evidence found the following facts:

(1) "When Alcorn and his squad of nine officers, including Sheriff Reynolds and his deputies, arrived at the Morgan home, Chief Alcorn drove his car, with his lights off, into the yard and parked it to the rear and right of the Cadillac. At the same time, the other officers surrounded the Morgan home. Alcorn them flooded the house with spotlights and summoned Morgan from his mother's home with the blaring call of a bullhorn. Responding to the coercive activity outside of the house, Morgan appeared at the front door holding a pistol in his hand. (App. 4a)

(2) "...the record provides ample proof that, 'as a practical matter, [Morgan] was under arrest,' Florida v. Royer, 103 S.Ct. 1319, 1327, 75 L.Ed.2d 229, 140 (1983) (plurality opinion), as soon as the police surrounded the Morgan home, and therefore, the arrest violated Payton because no warrant had been secured. The police show of force and authority was such that a 'reasonable person would have believed he was not free to leave.' United States v. Mendenhall, 446 U.S. 544, 554-55 (1980), (opinion of Steart, J.); United States v. Robinson, 650 F.2d 537, 538 (5th Cir. 1981)." (App. 11a and 12a)

(3) "Nine police officers and several patrol cars approached and surrounded the Morgan residence in the dark. The officer in charge strategically positioned his car in the driveway in front of the Morgan home blocking any movement of his car. The police then called for Morgan to come out of the house. 'These circumstances surely amount to a show of official authority such that "a reasonable person would have believed he was not free to leave."' Florida v. Royer,----U.S. at ------, 103 S.Ct. at 1326-1327 (plurality opinion), id. at 1330 (Brennan, J., concurring in result), id. at 1332-1333 (Blackmun, J., dissenting), quoting United States v. Mendenhall, 446 U.S. at 554 (opinion of Stewart, J.). Viewed objectively Morgan was placed under arrest, without the issuance of a warrant, at the moment the police encircled the Morgan residence." (App. 12a)

In view of the above factual circumstances, it is suggested that the use of the term "induced" is not a fair characterization of the manner in which Respondent was brought out of his house. Nor is it a fair statement that the officers arrested Respondent without entering the house. Under these facts, the authority of the officers had clearly entered the house with the advent of their entering the premises, surrounding the house, turning the floor lights into the front of the house and broadcasting the "bull horn" commands therein.

Thus, the authorities cited by Petitioner, viz:

United States v Watson, 423 U.S. 411 (1976)

Gerstien v Pugh, 420 U.S. 103 (1975)

United States v Santana, 427 U.S. 38 (1976)

Terry v Ohio, 392 U.S. 1 (and related citations under footnote 3)

United States v Renfro, 620 F2d 574-75

McGeehan v Wainwright, 526 F2d 397 (5th Cir) cert denied 425 U.S. 997 (1976)

United States v Herring, 582 F2d 535, 543

United States v Smith, 515 F2d 1031-32

would be inapplicable to the subject case.

Question Number 1 fails to include any consideration of "exigent circumstances," yet for the officers to arrest Respondent as the evidence describes, they must rely on exigent circumstances.

The U.S. District Court and Circuit Court of Appeals both found that there was no exigency sufficient to justify the warrantless entry of the home and arrest of (Respondent).

> "As found by the district court, the evidence 'shows that the occupants of the [Morgan] house were peaceful until startled by Officer Alcorn's car coming up their driveway in a clandestine manner.' Moreover, Morgan's prior contact with police officials had been friendly and cooperative. There was no substantiated evidence that Morgan was dangerous or that a grave offense or crime of violence had occurred or was even threatened. United States v. Killebrew, 560 F.2d at 734." (App. 9a)

The burden is on the government to demonstrate exigency.

> "Vale v. Louisiana, 399 U.S. 30, 34 (1970); McDonald v. United States, 335 U.S. 451, 456 (1948); United States v. Killebrew, 560 F2d at 733." (App. 6a)

The District Court's factual finding on the existence of exigent circumstances will not be disturbed unless clearly erroneous.

> "United States v. Gargotto, 510 F2d 409, 411 (6th Cir. 1974), cert denied, 420 U.S. 987, reh. denied, 423 U.S. 884 (1975)" (App. 6a)

> "The record here reveals no exigency sufficient to justify the warrantless entry of the home and arrest of Morgan. None of the traditional exceptions justifying abandonment of the warrant procedure are present here." (App. 7a)

Question 2 would seem to turn on whether the arrest occurred before or after Respondent had emerged from the house. If the arrest occurred while Respondent was inside the house and before he opened the door in response to the coercive action of the officers, then the weapon held by Respondent and immediately seized constituted fruit of the improper arrest according to well settled law. United States v. Williams, 604 F.2d 1102, 1123 (8th Cir. 1979); United States v. Cisneros, 448 F.2d 298, 303 n.6 (9th Cir. 1971).

The Circuit Court of Appeals found evidence from the District Court hearing, to fully support the position that the "detention" or apprehension" of the Respondent, both constituting facets of an arrest, occurred before Respondent opened the door to his dwelling. (App. 11a, 12a supra and authorities cited).

Question 3 of the Petition would call for the Court to extend recent modifications to the Fourth Amendment exclusionary rule even further so as to eliminate the need for the officers to appear before a magistrate. Question 3 further assumes the officers had (i) a reasonable belief that they could not obtain a search warrant from any of the three nearby magistrates and (ii) a reasonable belief that the warrantless arrest did not violate the Fourth Amendment.

The plain facts available from the evidentiary record, as found by the Court of Appeals, refutes the above assumptions.

> "During the one-to two-hour period between Sheriff Reynolds' first observation of Morgan at Potter Falls and Morgan's subsequent arrest, no effort was made by any law enforcement agency to obtain a search or arrest warrant. When asked at the suppression hearing why he did not obtain a warrant from one of the judges available on the weekend, Chief Alcorn stated: "Well, generally-we have tried to, on several occasions, to contact the judges on the weekend and either one of the judges are hard to reach on the weekend." (App. 5a)

The absence of exigent circumstances as reflected by the officer's testimony further reflects the unreasonableness of their harsh manner of intrusion. (See App. 9a supra)

Under the circumstances of the subject case, the Court of Appeals properly relied on Payton vs. New York, 445 U.S. 573 (1980) as well as the other authorities cited in its opinion.

CONCLUSION

The Petition for Writ of Certiorari should not be granted.

Respectfully submitted,

Counsel for Respondent